

241.
Mr. Took Esq; Appellant, his Answer to the 1st and 2d Case of Sir Robert Atkins Chief Baron, Respondent.

MR. Took acknowledges it to be true that his Bill in Chancery against Sir Robert, consisted of three Demands.
For an Account, First, Of his Great Grandfather's Estate, of which Sir Robert was one of his Executors in trust.
Secondly, Of Mr. Took's Rents received by Sir Robert, as Mr. Took's Guardian.
Thirdly, Of 1800 l. Received by Sir Robert for Mr. Took's Wives Portion with Sir Richard Atkin's Daughter.

'Tis true Sir Robert to the first Demand says, that in his Answer upon Oath he declares, That he never received any Sum of Money as Executors to Mr. Took's Great Grandfather.

But it appears by positive Proofs, That presently after the Great Grandfather's Death Sir Robert possess'd himself of his Mansion House and Personal Estate, and sent the best of his Goods to London, and committed great waste and spoils by cutting down Timber and Woods.

'Tis true also, that Sir Robert to the second Demand says in his Answer upon Oath, That he never received any Money for Mr. Took out of his Estate as his Guardian; and that he never was Guardian to him.

But it is also true, that it is positively proved upon Oath, That Mr. Reynells being by Order of the Court of Chancery discharged from being Mr. Took's Guardian, and Sir Robert demanding Payment of Mr. Took's Rents, the Tenants thereof or their Agents denied payment to him by advice of my Lord Chief Justice Saunders until Sir Robert was chosen Mr. Took's Guardian; And that Sir Robert to empower himself to receive those Rents, was chosen and admitted Mr. Took's Guardian in the Presence of the Witnesses; and upon such admittance he was paid several Sums for Mr. Took's Rents as his Guardian, and not otherwise; And these Sums are computed to be at least 1200 l.

As to the 1800 l. Sir Robert in his Answer says, That the same was given by Sir Richard Atkins to Mrs. Reynells (Mother to Mr. Took) by some agreement between her and Sir Richard, And that he the said Sir Robert did never see or receive a Penny thereof, but that Sir Richard paid the 1800 l. to Mrs. Reynells.

To which Mr. Took replies, That is also fully in Proof, That by Agreement between Sir Richard and Sir Robert, Sir Richard was to deposit in the hands of Sir Robert upon account of the Marriage the 1800 l. And that the 1800 l. was so deposited by advice of Sir Robert; And that at his Request it was by Deed to be given to himself in trust for Mrs. Reynells; and that Sir Richard by Sir Robert's advice Sealed that Deed, which was to Protect it from her Husband: And it is also fully in Proof, That by Sir Robert's Order the 1800 l. was afterwards paid.

Upon this Bill Answers and Proofs, Mr. Took's said Cause in Chancery came to be heard before the Lord Chancellor Jeffries, where it was decreed, That the 1800 l. was a Portion, and that an Account should be taken of the same, and of Mr. Took's Rents, and of the Great Grandfather's Estate by those who had Received it.

Upon this Decree Sir Robert being sensible that the Proofs sufficiently charged him, and that no one else could be accountable for Mrs. Took's Estate and the 1800 l. but himself, desired it might be referred to the then Serjeant, and now Lord Commissioner Rawlinson, who awarded Sir Robert to pay Mr. Took in full of all the said Demands 600 l. which Award was afterwards Confirmed by the Court, unless Sir Robert shewed Cause to the contrary, which he never offered to do.

Mr. Took being a Prisoner and greatly wanting his 600 l. sent to Sir Robert for the same, who before he would pay it proposed to Mr. Took, and in his Extremity procured from him the Articles following; That he and Sir Robert should prosecute Mr. Took's Mother, Mrs. Reynells, for Recovery of the 1800 l. of her; And that Sir Robert would use his Endeavour in such Prosecution, and be at part of the Charge thereof; and hereby was to receive 600 l. after Mr. Took had received the first 1200 l. And Sir Robert therein bound Mr. Took not to agree with or discharge his Mother without Sir Robert's Consent, and took a Bond from him to perform the said Articles of 1200 l. And the better to colour the said Articles; there was an Order of the Court of Chancery at the same time procured to be entered at the Registers, Wherein Sir Robert submitted to the said Award: And yet it is thereby ordered, That the said 600 l. shall be repaid him out of what should be recovered of Mrs. Reynell; and therein is suggested as if the same had been obtained by Motion of the then Attorney General, and in the Pretence of Mr. Took's Counsel; Whereas no such Motion was ever made by any Counsel, nor is there any Minutes thereof in the Register's Book; And yet this is the Order on which Sir Robert grounds his Case by his Papers.

Immediately upon the obtaining of this Order and Executing of these Articles, Mr. Took's Solicitor, with the Assistance of Sir Robert and his Papers, prosecuted Mr. Took's Mother (the Suit before that time being carried on amicable against her) And without her ever making the least Defence, or putting in any Answer but what was drawn by Mr. Took's Solicitor, now Sir Robert's, or her having so much as a Clerk or Counsel to defend the said Suit, there was a Report obtained *ex parte* against her for about 3700 l. which Report was nothing but a Charge without a Penny in Discharge, she never appearing, nor knowing the least of it; which afterwards appearing to the Court, the same was by subsequent Orders all set aside, and she admitted to make her Defence; wherein, after several Witnesses Examined on her behalf as to her Disbursement, Sir Robert himself came and Deposed for her, That Mrs. Reynells had laid out much more in the Education of Mr. Took, and for his Maintenance, then ever she received out of his Estate. And as to the 1800 l. That the same was never intended as a Portion, but a Gift to her; and that she ought not to be charged therewith, or to that effect. And upon those Proofs it was Mr. Took released his Mother: All which Sir Robert could not but know before he procured the Articles of Mr. Took, and before he and his Mother spent at least 600 l. in that Suit.

But it so happened, That Mr. Took, during the time of the said Prosecution, had an urgent occasion for 220 l. more, and desired Sir Robert to lend it him, which he refused to do, until he procured Mr. Took to enter into new Articles of the same Contents of the former; only by these new Articles Sir Robert was to have the 600 l. and 220 l. out of what should be Recovered of Mrs. Reynells before Mr. Took had any thing. And also Sir Robert took a Mortgage for the said 820 l. And such were Mr. Took's Necessities, he being then a Prisoner in the Kings Bench, that he entered into the said new Articles, and gave an absolute Mortgage for the same Sum, whereas he never received but 220 l. Upon which Mortgage Sir Robert exhibited his Bill in the Court of Exchequer, where he is Chief Baron, and in his own presence obtained a Decree to have the whole 820 l. paid him with Interest and Charges, or Mr. Took to be foreclosed of his Equity of Redemption.

Against which Decree Mr. Took Appeals to your Lordships, and prays redress.

For as to Sir Robert's saying The 1800 l. was no Portion, the Court of Chancery has decreed it to be so, and it cannot now be taken otherwise.

And as to Sir Robert's saying He paid the 1800 l. and Mr. Took's Rents to Mrs. Reynells, Mr. Took humbly conceives, and is advised, That it is nothing to him to whom Sir Robert paid it, the management of all being Transacted by Sir Robert, and when he was his Guardian; for if Sir Robert paid it to a Person who could not be accountable or responsible for it, Sir Robert ought to be so. Now 'tis plain Mrs. Reynells was not capable, either by Law or Equity to be accountable for it, she being a Feme Covert; and Sir Robert took care her Husband should not so, for he was not to intermeddle in it.

Mr. Took only agrees with Sir Robert in this, as Sir Robert in his first printed Case expresses, That the foundation of all was faulty.

But as to Sir Robert's questioning, whether your Lordships can reverse one part of the Decree, and confirm the other where it is intire, tacitly allows it Justice for your Lordship to redress Mr. Took in the 600 l. but questions the method how? Now there is no doubt but your Lordships are absolute Masters of your own Orders and Methods, and are not confined to strict Rules as Inferiour Jurisdictions are, but may, whenever your Lordships please, make Presidents; for every President had a beginning.

As to Sir Robert's second Point, That nothing can be offered to your Lordships upon an Appeal, but what was offered at the hearing of the Cause when the Decree was made; Mr. Took asserts, That every thing offered at your Lordships Bar was offered in the Exchequer, saving what related to the above mentioned Depositions in Chancery, which were in Mr. Took's former, and now Sir Robert's Solicitor's hands, who concealed and imbezelled them, tho now, by order of the Court of Chancery, he is ordered and obliged to produce them.

And Mr. Took hopes, That if Sir Robert will not consent to set aside the Award and Release, and waive his Privilege, and give Security to go to Account upon Mr. Took's Decree in Chancery, that your Lordships may, and Mr. Took hopes will Reverse the Decree obtained in the Exchequer by Sir Robert against him, which he humbly prays.

Decree against Sir Robert, 11th of April, 1687.

Award, 12th May, 1687. Confirmed, 28th April, 1688.

First Articles dated the 29. May, 1688.

Order of the 26. May, 1688.

The Report, the 18th Feb. 1688.

The Report set aside 8th of May and 29th June, 1689. Sir Robert's Deposition 29. Feb. 1689. Mr. Took's Release 4th of July, 1690.

Second Articles and Mortgage dated the 25th April, 1689. Sir Robert's Bill in Exchequer, Trinity Term, 1690. Decree against Mr. Took 2d. July, 1691.

Book III

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I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above matter. I have the honor to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
 Yours, very obediently,
 J. H. [Signature]

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